

Senate Study Bill 1183 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON FRAISE)

A BILL FOR

1 An Act relating to persons prohibited from possessing or
2 receiving firearms because of mental health commitments
3 or adjudications and to petitions for relief from such
4 prohibitions, and including effective date and applicability
5 provisions.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 724.31, Code 2011, is amended by striking
2 the section and inserting in lieu thereof the following:

3 **724.31 Persons subject to firearm disabilities due to mental**
4 **health commitments or adjudications — relief from disabilities**
5 **— reports.**

6 1. When a court issues an order or judgment under the
7 laws of this state by which a person becomes subject to the
8 provisions of 18 U.S.C. § 922(d)(4) and (g)(4), the clerk of
9 the district court shall forward only such information as is
10 necessary to identify the person to the department of public
11 safety, which in turn shall forward the information to the
12 federal bureau of investigation or its successor agency for
13 the sole purpose of inclusion in the national instant criminal
14 background check system database. The clerk of the district
15 court shall also notify the person of the prohibitions imposed
16 under 18 U.S.C. § 922(d)(4) and (g)(4).

17 2. A person who is subject to the disabilities imposed by 18
18 U.S.C. § 922(d)(4) and (g)(4) because of an order or judgment
19 that occurred under the laws of this state may petition
20 the court that issued the order or judgment or the court
21 in the county where the person resides for relief from the
22 disabilities imposed under 18 U.S.C. § 922(d)(4) and (g)(4).
23 A copy of the petition shall also be served on the director of
24 human services and the county attorney at the county attorney's
25 office of the county in which the original order occurred, and
26 the director or the county attorney may appear, support, object
27 to, and present evidence relevant to the relief sought by the
28 petitioner.

29 3. The court shall receive and consider evidence in a closed
30 proceeding, including evidence offered by the petitioner,
31 concerning all of the following:

32 a. The circumstances surrounding the original issuance of
33 the order or judgment that resulted in the firearm disabilities
34 imposed by 18 U.S.C. § 922(d)(4) and (g)(4).

35 b. The petitioner's record, which shall include, at a

1 minimum, the petitioner's mental health records and criminal
2 history records, if any.

3 c. The petitioner's reputation, developed, at a minimum,
4 through character witness statements, testimony, and other
5 character evidence.

6 d. Any changes in the petitioner's condition or
7 circumstances since the issuance of the original order or
8 judgment that are relevant to the relief sought.

9 4. The court shall grant a petition for relief filed
10 pursuant to subsection 2 if the court finds by a preponderance
11 of the evidence that the petitioner will not be likely to
12 act in a manner dangerous to the public safety and that the
13 granting of the relief would not be contrary to the public
14 interest. A record shall be kept of the proceedings, but the
15 record shall remain confidential and shall be disclosed only to
16 a court in the event of an appeal. The petitioner may appeal
17 a denial of the requested relief, and review on appeal shall
18 be de novo. A person may file a petition for relief under
19 subsection 2 not more than once every two years.

20 5. If a court issues an order granting a petition for relief
21 filed pursuant to subsection 2, the clerk of the court shall
22 immediately notify the department of public safety of the
23 order granting relief under this section. The department of
24 public safety shall, as soon thereafter as is practicable but
25 not later than ten business days thereafter, update, correct,
26 modify, or remove the petitioner's record in any database that
27 the department of public safety makes available to the national
28 instant criminal background check system and shall notify the
29 United States department of justice that the basis for such
30 record being made available no longer applies.

31 Sec. 2. APPLICABILITY. The state court administrator shall
32 coordinate with the department of public safety to forward
33 only such information as is necessary to identify a person
34 subject to an order or judgment specified in section 724.31,
35 subsection 2, for any such order or judgment that was issued

1 prior to January 1, 2011, and which is available electronically
2 in the Iowa court information system. Such information shall
3 be forwarded to the department of public safety, which in
4 turn shall forward the information to the federal bureau of
5 investigation or its successor agency for the sole purpose of
6 inclusion in the national instant criminal background check
7 system database, as soon as practical, but not later than four
8 months after the effective date of this Act. Within five days
9 of completion of the forwarding of information required by this
10 section of this Act, the department of public safety shall give
11 notice to the Code editor that the requirements of this section
12 of this Act have been fulfilled.

13 Sec. 3. EFFECTIVE UPON ENACTMENT. This Act, being deemed of
14 immediate importance, takes effect upon enactment.

15

EXPLANATION

16 This bill relates to persons prohibited from possessing
17 or receiving firearms because of mental health commitments
18 or adjudications and to petitions for relief from such
19 prohibitions, and including effective date and applicability
20 provisions.

21 The bill provides that when a court issues an order or
22 judgment by which a person becomes subject to the provisions
23 of 18 U.S.C. § 922(d)(4) and (g)(4), the clerk of the district
24 court shall forward only such information as is necessary to
25 identify the person to the department of public safety, which
26 in turn shall forward the information to the federal bureau
27 of investigation for the sole purpose of inclusion in the
28 national instant criminal background check system database. A
29 person who is subject to the disabilities imposed by 18 U.S.C.
30 § 922(d)(4) and (g)(4) because of an order or judgment may
31 petition the court that issued the order or judgment or the
32 court in the county where the person resides to remove the
33 disabilities imposed under 18 U.S.C. § 922(d)(4) and (g)(4).
34 The court shall receive and consider evidence in a closed
35 proceeding, including evidence offered by the petitioner,

1 concerning all of the following circumstances surrounding
2 the original issuance of the order or judgment that resulted
3 in the firearm disabilities imposed by 18 U.S.C. § 922(d)(4)
4 and (g)(4), the petitioner's record, including, at a minimum,
5 the petitioner's mental health records and criminal history
6 records, if any, the petitioner's reputation, developed, at a
7 minimum, through character witness statements, testimony, and
8 other character evidence, and any changes in the petitioner's
9 condition or circumstances since the issuance of the original
10 order or judgment that are relevant to the relief sought.

11 The bill provides that the court shall grant a petition for
12 relief if the court finds by a preponderance of the evidence
13 that the petitioner will not be likely to act in a manner
14 dangerous to the public safety and that the granting of the
15 relief would not be contrary to the public interest. A record
16 shall be kept of the proceedings, but the record shall remain
17 confidential and shall be disclosed only to a court in the
18 event of an appeal. The petitioner may appeal a denial of the
19 requested relief, and review on appeal shall be de novo. A
20 person may file a petition for relief under the bill not more
21 than once every two years. If a court issues an order granting
22 a petition for relief, the clerk of the court is required
23 to immediately notify the department of public safety of the
24 order granting relief and the department of public safety is
25 required, as soon thereafter as is practicable but not later
26 than 10 business days thereafter, to update, correct, modify,
27 or remove the petitioner's record in any database that the
28 department of public safety makes available to the national
29 instant criminal background check system and shall notify the
30 United States department of justice that the basis for such
31 record being made available no longer applies.

32 The bill further provides that the state court administrator
33 shall coordinate with the department of public safety to
34 forward only such information as is necessary to identify a
35 person subject to an order or judgment specified in the bill,

1 for any such order or judgment that was issued prior to January
2 1, 2011, and which is available electronically in the Iowa
3 court information system. Such information shall be forwarded
4 to the department of public safety, which in turn shall forward
5 the information to the federal bureau of investigation or its
6 successor agency for the sole purpose of inclusion in the
7 national instant criminal background check system database, as
8 soon as practical, but not later than four months after the
9 effective date of the bill. Within five days of completion of
10 the forwarding of information required by this section of this
11 bill, the department of public safety shall give notice to the
12 Code editor that the requirements of this section of this bill
13 have been fulfilled.

14 The bill takes effect upon enactment.